

## Message Text

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3 CSG (SJA) CLARK AIR BASE

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UNCLAS MANILA 12076

E.O. 11652: N/A

TAGS: MARR, RP

SUBJECT: CIVIL CASE: CARRIED LUMBER COMPANY VS. USA  
(PROCUREMENT OFFICER, CLARK AIR BASE)

PASS TO DEPT OF JUSTICE, FOREIGN LITIGATION UNIT

SUMMARY: PHILIPPINE COURT OF APPEALS RENDERED  
DECISION IN CARRIED LUMBER COMPANY VS. USA IN FAVOR  
OF PLAINTIFF FOR \$22,624.94 PLUS LEGAL INTEREST SINCE  
COMPLAINT FILED IN 1962. INSTRUCTIONS REQUESTED ON  
WHETHER FURTHER APPEAL BASED ON SOVEREIGN IMMUNITY  
SHOULD BE TAKEN. END SUMMARY.

1. DECISION BY COURT OF APPEALS IN ABOVE ENTITLED  
CASE DATED 24 SEPT 74 PROVIDED EMB BY SYCIP LAW FIRM  
ON 8 OCT 74. CASE ORIGINALLY FILED IN 1962 CONCERNING  
ALLEGED BREACH OF CONTRACT BY USAF IN 1955. COURT OF  
FIRST INSTANCE RENDERED JUDGEMENT IN FAVOR OF PLAINTIFF  
IN 1968 FOR \$22,624.93 (DOLLARS) CONTRACTUAL DAMAGES,  
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P430,000 PESOS SPECIAL DAMAGEDS TO PLAINTIFF'S BUSINESS

AND P25,000 PESOS ATTORNEYS' FEES.

2. COURT OF APPEALS REFUSED TO RECONGNIZE DEFENSE OF SOVEREIGN IMMUNITY BY FINDING THAT BY ENTERING INTO A CONTRACT WITH PLAINTIFF "THE DEFENDANT HAD, THEREFORE, DESCENDED TO THE LEVEL OF A PRIVATE PERSON AND MAY NOT ASSERT ANY RIGHT OR IMMUNITY INCIDENT TO HER POLITICAL SOVEREIGNTY." COURT ALSO FOUND THAT WHILE THE USG PROVED THAT PLAINTIFF USED DOUBLE INVOICING, IT NEVER-THELESS FAILED TO PROVE, BY THE PREPONDERANCE OF EVIDENCE, THAT SUCH DOUBLE INVOICING WAS USED FOR THE PURPOSES OF DEFRAUDING THE USG. IT FURTHER HELD THAT ANY "INTERPRETATION (OF THE CONTRACT PROVISIONS) WHICH WOULD CONFER UPON THE (US) COURT OF CLAIMS THE EXCLUSIVE JURISDICTION TO PASS UPON THE CLAIM OF PLAINTIFF-APPELLEE WOULD DEPRIVE OUR COURTS THEIR JURISDICTION AND IS NULL AND VOID. JURISDICTION OVER SUBJECT MATTER IS CONFERRED BY LAW AND THE PARTIES MAY NEITHER CONFER OR DEPRIVE OUR COURTS OF JURISDICTION..."

3. THEREFORE, COURT OF APPEALS AFFIRMED FINDINGS OF CFI BUT MODIFIED JUDGEMENT BY DETERMINING USG HAD NOT ACTED ARBITRARILY; CONSEQUENTLY, AFFIRMED ONLY SO MUCH OF JUDGMENT THAT AWARDED PLAINTIFF \$22,624.93 CONTRACTUAL DAMAGES PLUS LEGAL INTEREST FROM DATE COMPLAINT WAS FILED UNTIL FULLY PAID.

4. ATTORNEY SAN JUAN OF SYCIP LAW FIRM HAS NOW REQUESTED INSTRUCTIONS AS TO WHETHER APPEAL SHOULD BE TAKEN TO SUPREME COURT BASED ON SOVEREIGN IMMUNITY. BASIC ISSUE WOULD BE WHETHER CONTRACT FOR LUMBER IS CONSIDERED A GOVERNMENTAL OR PRIVATE ACT. IN THIS CONNECTION COURT OF APPEALS IN FINDING THAT LUMBER WAS USED FOR PACKING CRATES FOR PERSONAL EFFECTS, DONATED TO BUILD A CHAPEL AND TO IGOROTS FOR AHOSPITAL STATED THAT SUCH USES COULD NOT BE CONSIDERED "GOVERNMENTAL OR (FOR) PUBLIC PURPOSES, NOR WERE THEY NECESSARY TO THE DEFENSE OF THE STATE." HOWEVER, COURT DISREGARDED THE PURPOSE TO WHICH THE LUMBER WAS USED IN DETERMINIG THAT CONTRACTING ITSELF WAS IN NATURE OF A UNCLASSIFIED

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PRIVATE ACT.

5. ATTY SAN JUAN INSTRUCTED TO MAKE PRO FORMA MOTION FOR RECONSIDERATION IN ORDER TO SECURE TIME FOR ACTION ADDRESSEES TO EVALUATE OPINION AND DETERMINE IF FURTHER APPELLATE ACTION WARRANTED.

6. APPEAL MUST BE FILED WITHIN 15 DAYS AFTER

COURTS ACTS ON MOTION FOR RECONSIDERATION. SAN JUAN BELIEVES COURT WILL ACT ON AND DENY MOTION WITHIN NEXT FEW WEEKS AND REQUESTS INSTRUCTIONS ASAP.

7. IN OPINION OF SAN JUAN, SUPREME COURT HAS NOT DIRECTLY RULED ON SOVEREIGN IMMUNITY ISSUE INVOLVED IN THIS CASE AND BELIEVES THERE MAY BE SOME CHANCE OF FAVORABLE DECISION. EMB LEGAL OFFICER NOT THAT OPTIMISTIC. BELIEVES PHIL SUPREME COURT WOULD FOLLOW RECENT TREND IN THE RESTRICTIVE APPLICATION OF SOVEREIGN IMMUNITY AND AFFIRM COURT OF APPEALS.

8. COPIES OF OPINION FORWARDED TO ACTION ADDRESSEES.

9. ACTION REQUESTED: EVALUATION AND RECOMMENDATION BY 3RD CSG (SJA) TO WASHINGTON AGENCIES AND APPROPRIATE INSTRUCTIONS BY DEPT OF JUSTICE BY 25 OCT 74 IF POSSIBLE.

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## Message Attributes

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